IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.9584 OF 2004

Shri Laxman Pandurang Naiknaware, .. Petitioner

Vs

Shri Sukhdeo Tukaram Naiknaware, .. Respondent

Mr Dinesh W.Bhosale, for the petitioner.

CORAM : D.B.BHOSALE,J.

DATE : 8th December, 2004.

PC:

1. Heard the learned counsel for the petitioner.

2. By the order, impugned in the instant petition, the learned Judge has rejected the application for setting aside "No.W.S." order relying upon the judgment of Karanataka High Court in Smt.Savita Gupta Vs. Smt Nagarathna & ors, 2003 (3) CCC 358 = AIR 2003 Karnataka 426. It appears that the learned Judge was either not aware of the judgment in Shailaja A Sawant Vs. Sayajirao Ganpatrao Patil, 2004(2)Mah.L.J.419 or it was not brought to his notice, wherein this Court has taken a view that the provisions of Order 8 Rule 1 are directory in nature and in a given case the Court has powers to extend time to file written statement. The judgment also records a note of caution in paragraph 31 thereof. The said Judgment has, thereafter, been

affirmed by the Division Bench in **Chintaman Sukhdeo Kaklij and Ors Vs. Shivaji Bhausaheb Gadhe and Ors, 2004 (4) Mh.L.J.739**. Keeping that in view, in my opinion, the appropriate course would be to direct the learned Judge to consider the application-Exhibit-15 filed by the petitioner afresh in the light of the observations made in Shailaja Sawant's case and/or in Chintaman Sukhdeo Kaklij's case after giving an opportunity of being heard to the parties in the proceedings. Order accordingly. In view of this, the impugned order dated 18.3.2004 renders ineffective. With these observations, the writ petition is disposed of.

. A copy of this order may be made available to the parties.

(D.B.BHOSALE, J.)